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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

HAZEL WALSH, et al,

Plaintiffs,

v.

KINDRED HEALTHCARE, INC.;
KINDRED HEALTHCARE
OPERATING, INC.; CALIFORNIA
NURSING CENTERS, LLC; KINDRED
NURSING CENTERS WEST, LLC;
HILLHAVEN-MSC PARTNERSHIP;
ALTA VISTA HEALTHCARE &
WELLNESS CENTRE (A/K/A ALTA
VISTA HEALTHCARE); BAY VIEW
NURSING AND REHABILITATION
CENTER; CANYONWOOD NURSING
AND REHAB CENTER; CARE CENTER
OF ROSSMOOR, LLC; CARE CENTER
OF ROSSMOOR (F/K/A GUARDIAN OF

No. 3:11-CV-00050-JSW

THIRD AMENDED COMPLAINT FOR:

1. VIOLATION OF HEALTH & SAFETY
CODE SECTION 1430(b)
2. UNLAWFUL, UNFAIR AND DECEPTIVE
BUSINESS PRACTICES (Bus. & Prof. Code
§ 17200 *et seq.*)
3. VIOLATION OF THE CONSUMERS
LEGAL REMEDIES ACT (Civ. Code 1750 *et seq.*)

CLASS ACTION

DEMAND FOR JURY TRIAL

ROSSMOOR); FIFTH AVENUE
HEALTH CARE CENTER; GOLDEN
GATE HEALTHCARE CENTER;
HACIENDA CARE CENTER;
NINETEENTH AVENUE
HEALTHCARE CENTER; KINDRED
HEALTHCARE CENTER OF ORANGE;
SANTA CRUZ HEALTHCARE
CENTER; SMITH RANCH CARE
CENTER, LLC; SMITH RANCH CARE
CENTER(F/K/A GUARDIAN AT SMITH
RANCH CARE CENTER); VALLEY
GARDENS HEALTHCARE &
REHABILITATION CENTER;
VICTORIAN HEALTHCARE CENTER
(F/K/A HILLHAVEN VICTORIAN); and
DOES 1 through 100, inclusive,

Defendants.

Plaintiffs Arlene Bettencourt, Harry Harrison, Julie Barton, Romaine Crvarich, Jerry Dore, Dora Hernandez, Anne Knieriemen, Linda Mahaffey, Beverly Bakken, James Morris and Gordon Adams (“Named Plaintiffs” or “Plaintiffs”), on behalf of themselves and a class of similarly situated persons, and based on information and belief and the investigation of counsel, except for information based on personal knowledge, hereby allege as follows:

NATURE OF ACTION

1. Plaintiffs bring this class action lawsuit under California Health and Safety Code section 1430(b), Business & Professions Code sections 17200 *et seq.*, and the Consumers Legal Remedies Act, Civil Code sections 1750 *et seq.* (“CLRA”) to redress the pervasive and intentional failure to provide sufficient direct nursing care staffing for elderly and disabled residents at skilled nursing facilities owned, leased, licensed, operated, administered, managed, directed, and/or controlled by defendants within the State of California.

2. Understaffing is one of the primary causes of inadequate care and often unsafe conditions in skilled nursing facilities. Numerous studies have shown a direct correlation between inadequate staffing and serious care problems including, but not limited to, a greater likelihood of falls, pressure sores, significant weight loss, incontinence, and premature death.

3. In response to such studies linking inadequate staffing and serious care problems, all skilled nursing facilities in California since January 1, 2000 have been required to provide at least 3.2 hours of direct nursing hours per patient day (“NHPPD”), pursuant to Health & Safety Code section 1276.5. The 3.2 NHPPD requirement under Section 1276.5 represents the minimum staffing required for patients at skilled nursing facilities. Depending on patient needs and other factors, higher levels of direct nursing hours may be warranted. Significantly, after extensive research into the staffing levels required to meet patient needs, the federal government has increased the minimum recommended level for skilled nursing staffing to 4.1 NHPPD.

4. As alleged in more detail below, defendants’ California skilled nursing facilities have failed to meet the 3.2 NHPPD minimum requirements on numerous days during the Class Period (November 23, 2006 to present). Not surprisingly, many of these facilities have a relatively high number of reported complaints, deficiencies, and citations arising from inadequate care of their elderly and disabled residents, as reflected in records maintained by the California Department of Health Services (“DHS”).

5. Defendants have misrepresented to the consuming public—in particular, the elderly and disabled residents and their family members—that defendants operate their nursing facilities in compliance with applicable laws, including laws such as Health & Safety Code section 1276.5. They have failed to disclose that, in fact, their facilities do not provide sufficient nursing staff to comply with minimum staffing requirements. Defendants’ representations and omissions are deceptive, misleading, and made with the intent to induce elderly and disabled citizens to become residents, and remain residents, at defendants’ facilities under a false pretense, namely, that defendants will provide the direct nursing staffing required by law. Defendants’ misleading and deceptive conduct is particularly egregious given that the targeted persons are among the most vulnerable members of our society.

PARTIES

6. Plaintiff Gordon Adams, represented by his guardian ad litem and niece Mary Stompe, is a resident of Novato, California, and is an “elder” as defined under Welfare & Institutions Code § 15610.27 and a “senior citizen” as defined under Cal. Civ. Code § 1761(f).

1 During the Class Period, from approximately mid-2009 until July 2011, Gordon Adams was a
2 resident at Smith Ranch Care Center, a skilled nursing care facility located in San Rafael,
3 California.

4 7. Plaintiff Beverly Bakken is a resident of Santa Cruz, California. She is the
5 daughter and successor-in-interest of Gordon Bakken. During the Class Period, from September
6 15, 2010 until his death on January 20, 2011, Gordon Bakken was a resident at Santa Cruz
7 Healthcare Center, a skilled nursing care facility located in Santa Cruz, California. Gordon
8 Bakken was at all relevant times an “elder” as defined under Welfare & Institutions Code
9 § 15610.27 and a “senior citizen” as defined under Cal. Civ. Code § 1761(f).

10 8. Plaintiff Julie Barton is a resident of Tiburon, California. She is the daughter and
11 successor-in-interest to the Estate of Aranka Duboczy. During the Class Period, from July 2005
12 to April 2008, Aranka Duboczy was a resident at Fifth Avenue Healthcare, a skilled nursing care
13 facility located in San Rafael, California. Aranka Duboczy was at all relevant times an “elder” as
14 defined under Welfare & Institutions Code § 15610.27 and a “senior citizen” as defined under
15 Cal. Civ. Code § 1761(f).

16 9. Plaintiff Arlene Bettencourt, represented by her guardian ad litem and daughter
17 Lisa Edwards, is a resident of Antioch, California, and is an “elder” as defined under Welfare &
18 Institutions Code § 15610.27 and a “senior citizen” as defined under Cal. Civ. Code § 1761(f).
19 During the Class Period, from April to May 2008, Arlene Bettencourt was a resident at Care
20 Center of Rossmoor, f/k/a Guardian of Rossmoor, a skilled nursing care facility located in Walnut
21 Creek, California.

22 10. Plaintiff Kathleen Daley is a resident of Oakland, California. She is the daughter
23 and successor-in-interest to the Estate of Romaine Crvarich. During the Class Period, in
24 November 2010 and then again in March 2011, Romaine Crvarich was a resident at Bay View
25 Nursing and Rehabilitation Center, a skilled nursing care facility located in Alameda, California.
26 Romaine Crvarich was at all relevant times an “elder” as defined under Welfare & Institutions
27 Code § 15610.27 and a “senior citizen” as defined under Cal. Civ. Code § 1761(f).

1 11. Plaintiff Jerry Dore is a resident of Pleasanton, California. He is the husband and
2 successor-in-interest to the Estate of Mary Dore. During the Class Period, from July 2008 to
3 December 2009, Mary Dore was a resident at Hacienda Care Center, a skilled nursing care
4 facility located in Livermore, California. Mary Dore was at all relevant times an “elder” as
5 defined under Welfare & Institutions Code § 15610.27 and a “senior citizen” as defined under
6 Cal. Civ. Code § 1761(f).

7 12. Plaintiff Harry Harrison, represented by his guardian ad litem and daughter
8 Roxanne Harrison, is a resident of Pittsburg, California, and is an “elder” as defined under
9 Welfare & Institutions Code § 15610.27 and a “senior citizen” as defined under Cal. Civ. Code
10 § 1761(f). During the Class Period, from February to December 2008, Harry Harrison was a
11 resident at Care Center of Rossmoor, f/k/a Guardian of Rossmoor, a skilled nursing care facility
12 located in Walnut Creek, California.

13 13. Plaintiff Dora Hernandez is a resident of Orange, California. She is the daughter
14 and successor-in-interest to the Estate of Guadalupe Garcia. During the Class Period, from 2007
15 to 2010, Guadalupe Garcia was a resident at Kindred Healthcare Center of Orange, a skilled
16 nursing care facility located in Orange, California. Guadalupe Garcia was at all relevant times an
17 “elder” as defined under Welfare & Institutions Code § 15610.27 and a “senior citizen” as
18 defined under Cal. Civ. Code § 1761(f).

19 14. Plaintiff Anne Knieriemen, represented by her guardian ad litem and daughter
20 Rochelle Campbell, is a resident of Stockton, California, and is an “elder” as defined under
21 Welfare & Institutions Code § 15610.27 and a “senior citizen” as defined under Cal. Civ. Code
22 § 1761(f). During the Class Period, for six months in early 2010, Anne Knieriemen was a
23 resident at Valley Gardens Healthcare and Rehabilitation Center, a skilled nursing care facility
24 located in Stockton, California.

25 15. Plaintiff Linda Mahaffey is a resident of Redding, California. She is the
26 granddaughter and personal representative of the Estate of Alice Martin. During the Class Period,
27 from July 2005 to August 2011, Alice Martin was a resident at Canyonwood Nursing and Rehab
28 Center, a skilled nursing care facility located in Redding, California. Alice Martin was at all

1 relevant times an “elder” as defined under Welfare & Institutions Code § 15610.27 and a “senior
2 citizen” as defined under Cal. Civ. Code § 1761(f).

3 16. Plaintiff James Morris is an “elder” as defined under Welfare & Institutions Code
4 § 15610.27 and a “senior citizen” as defined under Cal. Civ. Code § 1761(f). During the Class
5 Period, from June 2006 to August 2010, James Morris was a resident at Alta Vista Healthcare &
6 Wellness Centre a/k/a Alta Vista Healthcare, a skilled nursing care facility located in Riverside,
7 California.

8 17. Defendant Kindred Healthcare, Inc. (“Kindred Inc.”) is a corporation formed and
9 existing under the laws of the State of Delaware, with its principal place of business located at
10 680 South Fourth Street Louisville, Kentucky 40202-2407. On information and belief, during the
11 Class Period defendant Kindred Inc. regularly conducted business in the State of California and—
12 either directly or through its wholly-owned subsidiaries and/or affiliated companies—owned,
13 leased, licensed, operated, administered, managed, directed, and/or controlled numerous skilled
14 nursing facilities in California. Defendant Kindred Healthcare, Inc., is the sole parent of
15 defendant Kindred Healthcare Operating, Inc. (“KHOI”).

16 18. Defendant Kindred Healthcare Operating, Inc. (“KHOI”) is a corporation formed
17 and existing under the laws of the State of Delaware, with its principal place of business located
18 at 680 South Fourth Street Louisville, Kentucky 40202-2407. On information and belief, during
19 the Class Period defendant KHOI regularly conducted business in the State of California and—
20 either directly or through its wholly-owned subsidiaries and/or affiliated companies—owned,
21 leased, licensed, operated, administered, managed, directed, and/or controlled numerous skilled
22 nursing facilities in California. Defendant KHOI is the sole equity member of defendant Kindred
23 Nursing Center West, LLC. (“Kindred West”).

24 19. Defendant Kindred Nursing Centers West, LLC (“Kindred West”) is a corporation
25 formed and existing under the laws of the State of Delaware, with its principal place of business
26 located at 680 South Fourth Street Louisville, Kentucky 40202-2407. On information and belief,
27 during the Class Period defendant Kindred West regularly conducted business in the State of
28 California and—either directly or through its wholly-owned subsidiaries and/or affiliated

1 companies—owned, leased, licensed, operated, administered, managed, directed, and/or
2 controlled numerous skilled nursing facilities in California. Kindred West is the sole equity
3 member of defendant California Nursing Center, LLC. Defendant Kindred West is also doing
4 business as, and is the designated licensee for, defendants: Alta Vista Healthcare; Canyonwood
5 Nursing and Rehabilitation Center; Fifth Avenue Healthcare Center; Golden Gate Healthcare
6 Center; Kindred Healthcare Center at Orange; Santa Cruz Healthcare Center; Valley Gardens
7 Healthcare & Rehabilitation Center; Victorian Healthcare Center; and Bay View Center.
8 Defendant Kindred West is also a partner in Hillhaven-MSD Partnership, licensee for 19th
9 Avenue Healthcare Center, together with another undisclosed Kindred entity.

10 20. Defendant California Nursing Centers, LLC (“California Nursing Centers”) is a
11 corporation formed and existing under the laws of the State of Delaware, with its principal place
12 of business located at 680 South Fourth Street Louisville, Kentucky 40202-2407. On information
13 and belief, during the Class Period defendant California Nursing Centers regularly conducted
14 business in the State of California and—either directly or through its wholly-owned subsidiaries
15 and/or affiliated companies—owned, leased, licensed, operated, administered, managed, directed,
16 and/or controlled numerous skilled nursing facilities in California. Defendant California Nursing
17 Center, LLC is the sole equity member of defendants: Care Center of Rossmoor, LLC; Riverside
18 Healthcare & Wellness Center, LLC; Orange Healthcare & Wellness Center, LLC; and Smith
19 Ranch Care Center, LLC.

20 21. Defendants Kindred Inc., KHOI, Kindred West, and California Nursing Centers
21 collectively are referred to as “Kindred.”

22 22. Defendant Hillhaven-MSD Partnership (“Hillhaven”) is on information and belief
23 a general partnership with Defendant Kindred Inc. formed and existing under the laws of the State
24 of California, with its principal place of business located at 680 South Fourth Street Louisville,
25 Kentucky 40202-2407. On information and belief, during the Class Period defendant Hillhaven
26 regularly conducted business in the State of California, and—either directly or through its wholly-
27 owned subsidiaries and/or affiliated companies—owned, leased, licensed, operated, administered,
28

1 managed, directed, and/or controlled skilled nursing facilities in California operated by Kindred,
2 including defendant Nineteenth Avenue Healthcare Center.

3 23. Defendant Care Center of Rossmoor LLC is a limited liability company organized
4 and existing under the laws of the State of Delaware, with a principal place of business at 680
5 South Fourth Street Louisville, Kentucky 40202-2407. On information and belief, during the
6 Class Period defendant Care Center of Rossmoor LLC regularly conducted business in the State
7 of California, and—either directly or through its wholly-owned subsidiaries and/or affiliated
8 companies—owned, leased, licensed, operated, administered, managed, directed, and/or
9 controlled skilled nursing facilities in California operated by Kindred, including defendant
10 Rossmoor.

11 24. Defendant Smith Ranch Care Center, LLC (“Smith Ranch”) is a limited liability
12 company organized and existing under the laws of the State of Delaware, with its principal place
13 of business located at 680 South Fourth Street Louisville, Kentucky 40202-2407. On information
14 and belief, during the Class Period Smith Ranch Care Center, LLC regularly conducted business
15 in the State of California, and—either directly or through its wholly-owned subsidiaries and/or
16 affiliated companies—owned, leased, licensed, operated, administered, managed, directed, and/or
17 controlled skilled nursing facilities in California operated by Kindred, including defendant Smith
18 Ranch.

19 25. Defendant Alta Vista Healthcare & Wellness Centre a/k/a Alta Vista Healthcare
20 (“Alta Vista”) during the Class Period up to September 30, 2009, was a skilled nursing care
21 facility located in Riverside, California and operating there under a license granted to Kindred
22 West by the State of California Department of Public Health. On information and belief, during
23 the Class Period up to September 30, 2009 defendant Alta Vista was leased, licensed, operated,
24 administered, managed, directed, and/or controlled by, or otherwise affiliated with Kindred.

25 26. Defendant Bay View Nursing and Rehabilitation Center (“Bay View”) is a skilled
26 nursing care facility located in Alameda, California and operating there under a license granted to
27 Kindred West by the State of California Department of Public Health. On information and belief,
28

1 during the Class Period defendant Bay View was leased, licensed, operated, administered,
2 managed, directed, and/or controlled by, or otherwise affiliated with, Kindred.

3 27. Defendant Canyonwood Nursing and Rehab Center (“Canyonwood”) is a skilled
4 nursing care facility located in Redding, California and operating there under a license granted to
5 Kindred West by the State of California Department of Public Health. On information and belief,
6 during the Class Period defendant Canyonwood was leased, licensed, operated, administered,
7 managed, directed, and/or controlled by, or otherwise affiliated with, Kindred.

8 28. Defendant Fifth Avenue Health Care Center (“Fifth Avenue”) is a skilled nursing
9 care facility located in San Rafael, California and operating there under a license granted to
10 Kindred West by the State of California Department of Public Health. On information and belief,
11 during the Class Period defendant Fifth Avenue was leased, licensed, operated, administered,
12 managed, directed, and/or controlled by, or otherwise affiliated with, Kindred.

13 29. Defendant Golden Gate Healthcare Center (“Golden Gate”) is a skilled nursing
14 care facility located in San Francisco, California and operating there under a license granted to
15 Kindred West by the State of California Department of Public Health. On information and belief,
16 during the Class Period defendant Golden Gate was owned, leased, licensed, operated,
17 administered, managed, directed, and/or controlled by, and/or otherwise affiliated with, Kindred.

18 30. Defendant Hacienda Care Center (“Hacienda”) is a skilled nursing care facility
19 located in Livermore, California and operating there under a license granted to Kindred West by
20 the State of California Department of Public Health. On information and belief, during the Class
21 Period defendant Hacienda was owned, leased, licensed, operated, administered, managed,
22 directed, and/or controlled by, and/or otherwise affiliated with, Kindred.

23 31. Defendant Nineteenth Avenue Healthcare Center (“Nineteenth Avenue”) is a
24 skilled nursing care facility located in San Francisco, California and operating there under a
25 license granted to Hillhaven by the State of California Department of Public Health. On
26 information and belief, during the Class Period defendant Nineteenth Avenue was owned, leased,
27 licensed, operated, administered, managed, directed, and/or controlled by, and/or otherwise
28 affiliated with, Kindred.

1 32. Defendant Kindred Healthcare Center of Orange (“Orange”), during the Class
2 Period until September 30, 2009, was a skilled nursing care facility located in Orange, California
3 and operating there under a license granted to Kindred West by the State of California
4 Department of Public Health. On information and belief, during the Class Period up to September
5 30, 2009 defendant Orange was leased, licensed, operated, administered, managed, directed,
6 and/or controlled by, or otherwise affiliated with, Kindred.

7 33. Defendant Care Center of Rossmoor f/k/a Guardian of Rossmoor (“Rossmoor”) is
8 a skilled nursing care facility located in Walnut Creek, California and operating there under a
9 license granted to Care Center of Rossmoor LLC by the State of California Department of Public
10 Health. On information and belief, during the Class Period defendant Rossmoor was leased,
11 licensed, operated, administered, managed, directed, and/or controlled by, or otherwise affiliated
12 with, Kindred.

13 34. Defendant Santa Cruz Healthcare Center (“Santa Cruz”) is a skilled nursing care
14 facility located in Santa Cruz, California and operating there under a license granted to Kindred
15 West by the State of California Department of Public Health. On information and belief, during
16 the Class Period defendant Santa Cruz was owned, leased, licensed, operated, administered,
17 managed, directed, and/or controlled by, and/or otherwise affiliated with, Kindred.

18 35. Defendant Smith Ranch Care Center f/k/a Guardian at Smith Ranch Care Center
19 (“Smith Ranch”) is a skilled nursing care facility located in San Rafael, California, and operating
20 there under a license granted to Smith Ranch Care Center LLC by the State of California
21 Department of Public Health. On information and belief, during the Class Period defendant Smith
22 Ranch was owned, leased, licensed, operated, administered, managed, directed, and/or controlled
23 by, and/or otherwise affiliated with, Kindred.

24 36. Defendant Valley Gardens Healthcare & Rehabilitation Center (“Valley Gardens”)
25 is a skilled nursing care facility located in Stockton, California and operating there under a license
26 granted to Kindred West by the State of California Department of Public Health. On information
27 and belief, during the Class Period defendant Valley Gardens was leased, licensed, operated,
28 administered, managed, directed, and/or controlled by, or otherwise affiliated with, Kindred.

37. Defendant Victorian Healthcare Center f/k/a Hillhaven Victorian (“Victorian”) is a skilled nursing care facility located in San Francisco, California and operating there under a license granted to Kindred West by the State of California Department of Public Health. On information and belief, during the Class Period defendant Victorian was owned, leased, licensed, operated, administered, managed, directed, and/or controlled by, and/or otherwise affiliated with, Kindred.

38. Each of the entities referenced in paragraphs 16 through 28 above is a “skilled nursing facility” as defined in Health & Safety Code section 1250. For purposes of this Complaint, each such entity is referred to as a “Facility” and, collectively, the “Facilities.”

39. At all times herein mentioned, defendants have all regularly conducted business throughout the State of California, including, but not limited to, the ownership, leasing, licensing, administration, operation, management, and/or supervision, and organization of the Facilities.

40. In response to frustration regarding identifying the entities responsible for nursing homes, the federal government recently enacted the Nursing Home Transparency Act (42 U.S.C. Sect 1320a-3) to help untangle the organizational structure of nursing home chains. The information required to be disclosed under the Act will not be available to the public until March of 2013. *See also* New York Times, September 23, 2007, “More Profit and Less Nursing at Many Nursing Homes” (describing how for-profit nursing home corporations are dividing themselves into many separate shell companies in order to avoid being held accountable to both the public regulatory system and residents). www.nytimes.com/2007/09/23/business/23nursing.html.

41. The Facilities named here have no corporate headquarters, governing bodies, or traditional management hierarchy of their own. Instead, Kindred Inc. manages, controls, and operates the Facilities. Kindred Inc. oversees clinical issues and quality concerns of the Facilities with management consisting of physicians, chief medical officers, medical directors, senior vice presidents of clinical and nursing operations, and regional and district teams.

42. All the Facilities reside in Kindred Inc.’s Nursing Center Division (formerly referred to as the Healthcare Division), which is managed by Kindred’s president and chief financial officer. The Nursing Center Division, like the other Kindred Inc. divisions, is broken

1 down into three geographic Regions, each of which is headed by an operational senior vice
 2 president who reports directly to the division president. The three regions are the East Region;
 3 Central Region; and West Region (also referred to as the Pacific region). The Regions, in turn,
 4 are broken into “Districts.” The Districts, in turn, contain “Centers,” the term Kindred uses to
 5 refer to its nursing Facilities.

6 43. The Nursing Center Division has a number of overall strategies applicable to all
 7 the Facilities, including to increase average occupancy levels; to seek out and obtain higher acuity
 8 patients because of the higher revenue these patients generate; to establish patient admission and
 9 census goals; and to reduce the use of contract labor.

10 44. The Nursing Center Division president is employed by KHOI, and his salary is
 11 guaranteed by Kindred Inc.

12 45. The Nursing Center Division assumes responsibility for utilization and business
 13 development of the Facilities, as well as developing and implementing long term strategy and
 14 day-to-day tactical execution of operational initiatives at the Facilities.

15 46. Kindred Inc. provides the Facilities with shared (centralized) processes, including
 16 centralized management, centralized information systems, state licensing and certification
 17 maintenance, federal and state reimbursement expertise, Medicare and Medicaid certification,
 18 legal, finance, purchasing, accounting, risk management, clinical, human resources, training,
 19 information technology, compliance, purchasing, and other functions. While the Facilities have
 20 lower level managers on site, the senior management and operational decisions at each are
 21 conducted by Kindred Inc. in accordance with a common business model. The centralization of
 22 these services is intended to promote the standardization of certain processes.

23 47. Kindred Inc. refers to the Facilities as “sites of service.” In filings with the SEC,
 24 Kindred Inc. describes how it monitors and oversees the Facilities. For example, Kindred Inc.:

25 Monitor[s] and enhance[s] the quality of care and customer service
 26 at our nursing and rehabilitation centers through the use of
 27 performance improvement committees as well as family satisfaction
 28 surveys. Our performance improvement committees oversee
 resident healthcare needs and resident and staff safety. Physician
 medical directors serve on these committees and advise on
 healthcare policies and practices. We regularly conduct surveys of

1 residents and their families, and these surveys are reviewed by our
 2 performance improvement committees at each center to promote
 quality care and customer service.

3 Kindred Healthcare, Inc., Annual Report Pursuant to Section 13 or 15(d) of the Securities
 4 Exchange Act of 1934, for the fiscal year ended Dec. 31, 2009 ("Kindred 2009 Form 10-K") at
 5 13.

6 48. There is a sufficient unity of interest and ownership between Kindred Inc.,
 7 Kindred West, California Nursing Centers, KHOI and the Facilities, and each of them, such that
 8 the acts of one are for the benefit of all and can be imputed to the acts of the others. Without
 9 limitation, the unity of interest and relationship between these defendants is evidenced by: (a)
 10 Kindred's key decisions or approval of such decisions concerning each Facility's day-to-day
 11 operations, such as staffing levels, employee hiring and firing, budgets and related issues, which
 12 decisions and directives, on information and belief, were made at the direction of and/or the
 13 benefit of Kindred; (b) communications by Kindred with the Department of Health Services with
 14 respect to licensing and certification issues affecting the Facilities, which communications, on
 15 information and belief, were undertaken at the direction of and/or for the benefit of Kindred; and
 16 (c) overlapping officers, directors and employees between the various entities. Actions taken by
 17 these defendants were undertaken within the course and scope of their agency and employment,
 18 with the knowledge, consent, authorization, approval, and/or ratification of their co-defendants.

19 49. Kindred conducts, manages, and controls the material compliance functions for the
 20 Facilities, including those associated with compliance with the legal and regulatory issues
 21 challenged in this lawsuit, namely the failure of each of the Facilities to comply with laws and
 22 regulations mandating adequate nurse staffing. Additionally, each of the Facilities delegated such
 23 compliance functions to Kindred to conduct on their behalf. Among other things, with respect to
 24 the Facilities, Kindred: (1) oversees all compliance program operations; (2) conducts and
 25 oversees regular and targeted training on compliance programs, policies and procedures, as well
 26 as federal and state laws and regulations affecting the skilled nursing, home health, and hospice
 27 industries; (3) leads and coordinates the efforts of all compliance personnel; (4) develops and
 28

1 implements systems to assist clients in detecting, preventing and reporting potential fraud, waste,
 2 and abuse in business operations; (5) creates, reviews, revises, and updates, at a minimum
 3 annually, core elements of the compliance program, including but not limited to compliance-
 4 related policies and procedures; (6) develops and executes a compliance work plan that is based
 5 on industry and government activities, results of internal and external audits and surveys, trended
 6 hotline data and other identified areas of prioritized compliance risk; (7) oversees the compliance
 7 hotline and maintains systems to respond to calls in a timely manner; (8) tracks data related to
 8 compliance issues; (9) initiates, directs, and participates in investigations related to compliance
 9 concerns and issues, and works with management to bring such issues to resolution; (10) works
 10 collaboratively with each of the Facilities; (11) provides reports of relevant compliance program
 11 activities to the Kindred Board of Directors on at least a quarterly basis; (12) develops,
 12 implements, and evaluates a system of enterprise-wide compliance communication to all
 13 employees; (13) identifies, monitors, and responds to potential areas of compliance vulnerability,
 14 including minimum nursing hour requirements; (14) conducts formal compliance risk
 15 assessments that drive the development of an annual compliance work plan; (15) oversees the
 16 development, and monitors implementation, of corrective action plans in response to internal or
 17 external regulatory audit/survey findings; and (16) manages all other aspects of the Facilities'
 18 compliance efforts. The failure of the aforementioned compliance functions caused Plaintiffs and
 19 the Class loss and injury, as described more fully below.

20 50. The Facilities pay the cost of Kindred's services by paying Kindred a percentage
 21 of their net profits. The percentage of net profit is set by the Region, not by the Facility. Those
 22 costs, in turn, are reimbursed to the licensees (Kindred West, *et al.*) by Medicare and Medi-Cal as
 23 part of "Home Office" costs. The Facilities thus both used the parents' (Kindred's) personnel and
 24 equipment to perform their functions and paid the parent for those services.

25 51. Each of the Facilities is wholly owned, leased, operated, managed, and/or
 26 controlled by Kindred, and Kindred fails to recognize the uniqueness and independence of the
 27 Facilities, even when Kindred does not own the Facility. At all times relevant hereto there was
 28 such a unity of interest and ownership between Kindred and the Facilities that the individual

1 distinctions between them ceased to exist, and the facts as alleged herein are such that an
2 adherence to the fiction of the separate existence of Kindred from that of the Facilities would,
3 under the particular circumstances alleged herein, sanction a fraud, promote injustice, and
4 frustrate a meritorious claim. On information and belief, Kindred deliberately set up empty shells
5 and agents so that it could deceive the public and the residents as to who was actually responsible
6 for the decisions made at the Facilities, while also siphoning funds out of the Facilities, allowing
7 any single Facility to avoid paying a judgment against it. Kindred is the alter-ego of each of the
8 Facilities and any corporate veil should be pierced.

9 52. Kindred and the Facilities are part of a single enterprise formed for a common
10 purpose with a unity of interest. The viability of each of the Facilities is intertwined with their
11 dependence on Kindred. As described further within, consistent with this unity of interest and
12 interdependence, the senior management and control of each of the Facilities is delegated to
13 and/or otherwise conducted by Kindred. Kindred actively participates in and manipulates the
14 business activities of the Facilities, including the conduct challenged in this complaint. The
15 control and manipulation of the Facilities by Kindred is so pervasive that each of them is but an
16 agent, instrumentality, conduit and/or alter-ego of Kindred in the prosecution of a single venture,
17 namely, the provision of nursing home services to California consumers, including members of
18 the Class. There is such unity of interest, ownership and management that the separateness of the
19 defendant corporations have in effect ceased and an adherence to the fiction of a separate
20 existence of the multiple corporations or entities would, under the circumstances here present,
21 promote injustice and make it inequitable for Kindred Inc., Kindred West, California Nursing
22 Centers, and KHOI to escape liability for obligations incurred as much for their benefit as the
23 Facilities. The Facilities were merely used to effect the scheme of the parent entities.

24 53. Plaintiffs allege on information and belief the following facts demonstrating
25 defendants' unity of interest and that adherence to the fiction of their separate existence would
26 sanction a fraud and/or promote injustice:

27 a. Kindred Inc. provides letters to the California Department of Health on
28 behalf of its subsidiaries, including the Facilities named herein, as evidence that the subsidiaries

1 have sufficient resources to operate the Facilities for a period of at least 45 days, based upon
2 multiple Facilities having access to the same multimillion dollar line of credit at the same bank.
3 The credit line is in the name of Kindred Healthcare, Inc. and KHOI, and all of the Facilities are
4 guarantors on the credit line. Thus, if any one Facility were to default, the other Facilities would
5 be required to pay off loans made on the credit line to the defaulting Facility. The credit line, in
6 turn, is used to jointly meet the state and federal licensing financial responsibility requirements of
7 the Facilities. In the credit line all the Kindred entities jointly promise that they will comply with
8 all laws and regulations. This shows commingling of funds and that Kindred Inc. exercises
9 budgetary control over its subsidiaries.

10 b. Kindred Inc. indicates in its SEC filings that it manages labor costs by
11 adjusting nurse staffing, showing Kindred Inc.'s oversight of employment matters at the Facility-
12 level (where nursing care is provided) and centralized budgetary control. Kindred Healthcare,
13 Inc., 10-K Annual Report for the fiscal year ended Dec. 31, 2007 at 37, 59; and for the fiscal year
14 ended Dec. 31, 2008 at 6, 14.

15 c. Kindred Inc. employs a "cluster market" organization strategy,
16 intentionally grouping Facilities together geographically, to coordinate operations of the
17 Facilities. "These cluster markets present opportunities for our nursing and rehabilitation centers
18 and hospitals to share centralized business office operations and collaborate on their sales and
19 marketing and managed care strategies." Kindred Healthcare, Inc., 10-K Annual Report for the
20 fiscal year ended Dec. 31, 2010 at 8-9, 15; Kindred Healthcare, Inc., 10-K Annual Report for the
21 fiscal year ended Dec. 31, 2007 at 16-17. For example, when a staff member at one Facility does
22 not show up for work on a scheduled work day, that Facility will attempt to find a substitute from
23 the staff of another Facility that falls within the same "cluster" of Facilities.

24 d. According to documents submitted by defendants to the California
25 Department of Public Health, the same persons serve as the Vice Presidents, Senior Vice
26 Presidents, Executive Vice Presidents, and Presidents at both Kindred Inc. and KHOI, at the same
27 address.
28

1 e. The Facilities freely use the trademarks of Kindred with no consideration
2 or royalty fee. All defendants use the Kindred logo, and their written materials describe Kindred
3 as if it were a single entity.

4 f. The liability policy for all of the Facilities is in the name of Kindred, Inc.,
5 not in the name of the Facilities. The policy is issued by Cornerstone Insurance Company, a
6 Cayman Island subsidiary of Kindred, Inc. The Facilities set aside insurance reserves. These
7 reserves are not refunded to the Facilities, but rather are used by Kindred, Inc., to pay down debt.
8 This shows commingling of funds, and that Kindred has deliberately structured its liability
9 policies such that the Facilities may be unable to pay judgments against them, thus frustrating
10 meritorious claims.

11 g. All senior personnel at each Facility have access to the Kindred website,
12 Knect. Knect provides access to various departments and operations, including: Global; Kindred
13 Support Center; Nursing Center Division; Hospital Division; Rehab Division; Subacute Units;
14 Human Resources and Payroll; and Reset Domain Password. That site provides different levels
15 of access depending how far up the chain of command the Kindred employee is. Every aspect of
16 each Facility is subject to uniform policies and procedures which are all available on the Knect
17 web site. There are at least eight separate procedure manuals controlling every aspect of how the
18 Facility is run (referred to internally as the "Great Eight"). A Facility is not supposed to deviate
19 from these policies and procedures. A Facility does not have the ability to change any of those
20 policies and procedures without the permission and consent of the Nursing Home Division.

21 h. Employees of Facilities are hired by KHOI, trained by KHOI and paid
22 through KHOI. Facility employees are offered opportunities to move up the ladder within the
23 Kindred Nursing Home Division. If they are transferred between Facilities, they maintain their
24 seniority and benefits. They belong to one employee benefit plan run by KHOI. If they work for
25 more than one Facility in a "Cluster," they are paid overtime.

26 i. Kindred Inc.'s Nursing Center Division prepares a daily census summary
27 for the Facilities that indicates whether they have varied from the budget.
28

j. Kindred Inc. Facilities do not negotiate or execute their own master leases but do have obligations under them, reflecting the lack of an arms-length transaction. All of the Facilities are subject to master lease agreements which are all signed by Kindred, Inc. and KHOI, not by the Facilities. The master leases cross-collateralize lease payments among Facilities, such that if a particular Facility cannot pay the rent, other Facilities or Kindred would cover the debt. There is no ability to terminate the lease of any individual Facility under the master lease agreements. If Kindred elects to renew the master leases, all, and not less than all, of the Facilities in a renewal bundle must be renewed. If any of the Facilities loses its required healthcare license, it would be considered an event of default by all the Facilities. Indeed, even a reduction in the number of licensed beds in excess of 10% by any one Facility would be considered a default by all the Facilities under the master leases. Defendants thus have agreed to be liable for each other's debts under the leases.

k. KHOI's Payroll Department is responsible for issuing itemized wage statements to the staff at each Facility. KHOI also approves wage or salary adjustments for the staff. Staff questions or disputes about wages are directed to KHOI.

l. On August 6, 2010, Kindred Inc., KHOI, and Kindred Nursing Centers East, LLC stipulated in another case that the court and jury must consider these entities as "a single entity." *Owens v. Kindred Healthcare, Inc.*, No. 2007-417 (Mass. Super. Ct.). The Kindred parents and licensees should not be permitted to acknowledge that they are a single enterprise before the court when convenient while seeking to obscure this status in order to avoid judgment in other cases.

54. Enjoining the Facilities from understaffing without also enjoining Kindred would be ineffective and promote injustice because Kindred controls, influences and is jointly responsible for understaffing at the Facilities.

55. On information and belief, at all times herein mentioned, defendants, and each of them, was the agent, partner, joint venturer, representative, and/or employee of the remaining defendants, and was acting within the course and scope of such agency, partnership, joint venture, and/or employment. Furthermore, in engaging in the conduct described below, defendants were

1 all acting with the express or implied knowledge, consent, authorization, approval, and/or
 2 ratification of their co-defendants.

3 56. Defendants constitute a joint venture because, as alleged in paragraphs 43 through
 4 53, they combined their property, skill, and knowledge to carry out a single business undertaking
 5 and agreed to share the control, profits, and losses. In understaffing the Facilities and
 6 misrepresenting their staffing and/or failing to disclose understaffing, Defendants were acting
 7 within the scope of this agreement.

8 57. The Facilities are Kindred's agents because the nursing services performed by the
 9 Facilities are sufficiently important to Kindred that, if the Facilities did not perform these
 10 services, then Kindred's own officials would undertake to perform them. As explained in
 11 Kindred Inc's 2010 Annual Report, "Kindred Healthcare, Inc. is a healthcare services company
 12 that through its subsidiaries operates hospitals, nursing and rehabilitation centers, assisted living
 13 facilities and a contract rehabilitation services business across the United States." Kindred
 14 Healthcare, Inc., 10-K Annual Report for the fiscal year ended Dec. 31, 2010 at 3.

15 **JURISDICTION AND VENUE**

16 58. This Court has jurisdiction over all causes of action asserted herein. Defendants
 17 are subject to the personal jurisdiction of this Court because each defendant has sufficient
 18 minimum contacts in California, or otherwise intentionally avails itself of the California market
 19 through participation in skilled nursing facilities located in California, derivation of substantial
 20 revenues from California, and other activities, so as to render the exercise of jurisdiction over it
 21 by the California courts consistent with traditional notions of fair play and substantial justice.

22 59. This court has subject matter jurisdiction pursuant to the Class Action Fairness
 23 Act, 28 U.S.C. § 1446.

24 60. Venue is proper in this District under 28 U.S.C. § 1391(a), based on the facts,
 25 without limitation, that: this Court is a court of competent jurisdiction; defendants were subject
 26 to personal jurisdiction in the District at the time this action commenced based on conducting
 27 substantial business in this District, including without limitation, the ownership, administration,
 28 management, and/or operation of the Golden Gate, Nineteenth Avenue, and Victorian Facilities; a

substantial part of the events or omission giving rise to the Plaintiffs' claims arose in this District; Plaintiffs reside in this District; a portion of defendants' liability arose in this District; and certain acts upon which this action is based occurred in part in this District.

GENERAL ALLEGATIONS

61. Defendants were and are in the business of providing long-term care and are subject to the requirements of federal law, and California statutory and regulatory law, governing the operation of skilled nursing facilities. At all relevant times, Defendants owned, leased, licensed, operated, administered, managed, directed, and/or controlled numerous skilled nursing facilities in California.

62. Kindred Inc. classifies itself as the "largest publicly held operator of nursing and rehabilitation centers in the United States." Kindred 2009 Form 10-K at 13.

63. The General Accountability Office has found that most poorly performing nursing homes in the U.S. are owned by for-profit chains. GAO, *CMS's Specific Focus Facility Methodology Should Better Target the Poorly Performing Facilities Which Tend To Be Chain Affiliated and For-Profit*, GAO-09-689 (2009). Many studies have shown that for-profit nursing homes have poorer quality, operate with lower costs, and have lower staff-patient ratios than nonprofit facilities. *See, e.g.,* V.R. Comondore et al., *Quality of Care on For-Profit and Not-for-Profit Nursing Homes: Systemic Review and Meta-Analysis*, 339 Brit. Med. J. 2732 (2009). Other studies have found that poor nursing home quality is directly related to inadequate staffing levels. *See, e.g.,* U.S. Centers for Medicare and Medicaid Services, *Report to Congress: Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes* (2001).

64. Kindred Inc. has a long history of compliance issues. Kindred Inc.'s corporate predecessor, Vencor, Inc., and Ventas, Inc., a related real estate investment trust, faced a \$1.3 billion fraud claim from the United States government alleging that Vencor knowingly submitted false claims to Medicare, Medicaid, and Tricare, the military's health care program. In 2001, this suit and related civil claims settled for \$219 million. After reorganization following Vencor's Chapter 11 bankruptcy in 1999, from 2001 to 2008, Kindred Inc. entered into a corporate compliance agreement (CIA) with the U.S. Office of the Inspector General (OIG) because of poor

1 quality of care. In 2009, Kindred Healthcare agreed to pay \$1.3 million to settle allegations in a
 2 qui tam complaint that Kindred billed Medicaid for a higher number of drugs than were actually
 3 administered.

4 65. In 1999, in response to growing concern over the low levels of direct patient
 5 staffing and quality of care in nursing homes, the California Legislature amended Health & Safety
 6 Code section 1276.5 to increase the minimum nursing staff requirement to 3.2 hours of direct
 7 patient care per day, effective January 2000.

8 66. Section 1276.5, as amended, states in pertinent part:

9 [C]ommencing January 1, 2000, the minimum number of actual
 10 nursing hours per patient required in a skilled nursing facility shall
 be 3.2 hours, except as provided in Section 1276.9.

11 For purposes of this section, “nursing hours” means the number of
 12 hours of work performed per patient day by aids, nursing assistants,
 or orderlies plus two times the number of hours worked per patient
 13 day by registered nurses and licensed vocational nurses (except
 directors of nursing in facilities of 60 or larger capacity) ... except
 14 that nursing hours for skilled nursing facilities mean the actual
 hours of work, without doubling the hours performed per patient
 15 day by registered nurses and licensed vocational nurses.

16 Health & Safety Code § 1276.5 (a) and (b)(1). The California skilled nursing facilities that are at
 17 issue in this action are not exempt under Health & Safety Code section 1276.9.

18 67. Generally, only the hours of certified nurses assistants, licensed vocational nurses,
 19 and registered nurses are considered to determine whether staffing ratios at skilled nursing
 20 facilities are in compliance with the requirement of Section 1276.5. The 3.2 NHPPD requirement
 21 is calculated on a facility-wide basis over a 24-hour period.

22 68. Consistent with Section 1276.5, Health & Safety Code section 1559.1 establishes a
 23 “Patient’s Bill of Rights” for residents in skilled nursing facilities that requires, among other
 24 things, that the skilled nursing facilities “employ an adequate number of qualified personnel to
 25 carry out all functions of the facility.” An essential function of a skilled nursing facility is the
 26 provision of nursing services.
 27
 28

1 69. At all relevant times, defendants have been required to staff the Facilities with
2 sufficient levels of qualified personnel so as to comply with the 3.2 NHPPD requirement of
3 Section 1276.5 and the requirements of Section 1599.1.

4 70. Defendants portray and promote their facilities as meeting or exceeding all
5 statutory and regulatory requirements, including minimum staffing requirements. In their
6 standard Resident Rights and in postings at their facilities, defendants uniformly and
7 systematically claim to adhere to “the resident rights afforded under State law, [which] may be
8 obtained from the [Kindred] business office,” including the Patient’s Bill of Rights, as set forth in
9 Section 72527 of the California Administrative Code, which in part requires defendants to
10 provide an “adequate number of qualified personnel.”

11 71. Kindred’s standard Code of Conduct provided to new residents states in pertinent
12 part: “Kindred strives to sustain the highest quality of services.” The Code of Conduct further
13 states that Kindred’s “[o]fficers, employees and contractors are expected to adhere to practices
14 that promote these measures,” including a “commitment to excellence” requiring Kindred “to be
15 responsive to patient, resident and family concerns” and “maintain patient/residents’ rights and
16 dignity at all times while under our care.” Kindred’s yearly Quality and Social Responsibility
17 Reports likewise tout Kindred’s purportedly high quality standards.

18 72. In addition, defendants have also promised the State of California that they meet
19 all state and federal requirements regarding the operation, management, administration, and/or
20 ownership of a skilled nursing facility. In particular, as part of the initial licensing and annual
21 renewal process for each Facility, defendants promise to comply with the Health and Safety Code
22 and applicable regulations, which include minimum staffing requirements. The California
23 Department of Public Health lacks the resources, however, to monitor daily staffing levels at the
24 Facilities. At best, it samples only a few days per year.

25 73. Defendants’ representations track their duty under California law to provide
26 sufficient nursing staff and related services. Unfortunately, the actual nurse staffing provided falls
27 well short of defendants’ representations and their legal duty. Defendants have systematically
28

1 and continuously failed to comply with the 3.2 hour NHPPD requirement under Section 1276.5
2 on 20% or more days during the Class Period.

3 74. Despite their failure to adequately staff their skilled nursing facilities in California
4 and provide the quality of care they claimed to provide, defendants wrongly received in the
5 aggregate millions of dollars in payments from residents and/or their family members. These
6 monies were solicited and collected under the false and misleading pretense that defendants
7 complied with California staffing laws and would remain in compliance.

8 75. Plaintiffs resided at one or more Facilities on days during the Class Period when
9 direct nursing staff levels were below the minimum levels required under California law.

10 76. Defendants did not disclose to Plaintiffs that they did not intend to comply with
11 the 3.2 hour NHPPD minimum staffing requirements of Section 1276.5 or employ an adequate
12 number of qualified nursing personnel to carry out all of the functions of their facilities in
13 compliance with Section 1599.1. Plaintiffs reasonably expected that staffing would comply with
14 the legal requirements and paid money to defendants from their own funds to remain at the
15 facility where they resided. However, defendants failed to provide the nursing staffing levels that
16 Plaintiffs reasonably expected to receive. As such, Plaintiffs lost money and was injured in fact
17 as a result of defendants' failure to comply with the legal minimum staffing requirements.
18 Plaintiffs were also deprived of their rights under Sections 1276.5 and 1599.1 to reside in a
19 skilled nursing facility that provided sufficient skilling nursing personnel to comply with
20 California law.

21 77. During their stays at the Facilities, each of the named plaintiffs (or their deceased
22 relatives) suffered one or more of the following indignities and other harms that directly resulted
23 from failure to maintain minimum and adequate qualified nurse staffing at their respective
24 facilities, including without limitation: no response or long response times to call lights; lack of
25 assistance with grooming and bathing; inadequate attention to toileting needs, resulting in
26 residents' sitting in undergarments and bedclothes soaked in urine or feces; rough and painful
27 handling by staff; lack of assistance with eating; failure to provide fluids as needed, resulting in
28 dehydration and frequent urinary tract infections; falls; pressure sores; failure to administer

1 medications or improper administration of medications; loss of personal items and medical
2 devices; failure to provide pain control; over-sedation; and lack of proper hygiene and infection
3 control measures.

4 78. Numerous specific instances of the safety risks associated with understaffing were
5 documented by the DPH at the Facilities during the Class Period. A small sampling of these
6 deficiencies includes repeated falls by residents at Orange, even after the resident was assessed to
7 be at a high risk for falls; a resident falling several times within the same week, and ultimately
8 cracking a rib, at Alta Vista; a resident being the victim of sexual abuse at Alta Vista; residents
9 being verbally abused by staff for using their call lights at Alta Vista; failure to isolate patients
10 with contagious infections at Bay View; failure to ensure call lights were operational at Bay
11 View; failure to identify a change in a resident's condition resulting in an emergency
12 ophthalmology appointment at Bay View; failure to prevent physical abuse at Bay View; reported
13 falls by residents at Bay View; failure to prevent physical abuse at Canyonwood; reports of
14 decubitus ulcers (or pressure sores) at Canyonwood; and a failure to monitor resident eating and
15 dehydration difficulties, resulting in a 37 pound weight loss in 29 days and an emergency hospital
16 visit at Canyonwood, to name a few.

17 **CLASS ACTION ALLEGATIONS**

18 79. This action is brought on behalf of the Named Plaintiffs identified above and all
19 similarly situated persons pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and
20 23(b)(3). The class is defined as:

21 a. **Kindred Class.** All persons who resided at one of Kindred's California
22 Facilities from November 23, 2006 through the date of class certification (the "Class Period") The
23 claims alleged in the First Cause of Action under Health & Safety Code section 1430(b) are
24 asserted on behalf of the Facility Resident Class.

25 b. **Facility Subclasses.** The claims alleged in the First and Cause of Action
26 under Health & Safety Code section 1430(b) are asserted on behalf of each Facility Subclass
27 against the Facility in which the relevant named plaintiffs and class members resided.
28

1 i. **Fifth Avenue Class.** All persons who resided at Fifth Avenue
2 Healthcare from November 23, 2006 though the date of class certification. Plaintiff Julie Barton,
3 as the successor-in-interest to the Estate of Aranka Duboczy, represents this subclass.

4 ii. **Rossmoor Class.** All persons who resided at Care Center of
5 Rossmoor, f/k/a Guardian of Rossmoor, from November 23, 2006 through the date of class
6 certification. Plaintiffs Arlene Bettencourt, through her guardian ad litem and daughter Lisa
7 Edwards, and Harry Harrison, through is guardian ad litem and daughter Roxanne Harrison,
8 represent this subclass.

9 iii. **Bay View Class.** All persons who resided at Bay View Nursing
10 and Rehabilitation Center from November 23, 2006 though the date of class certification.
11 Plaintiff Kathleen Daley, as the successor-in-interest to the Estate of Romaine Crvarich,
12 represents this subclass.

13 iv. **Hacienda Class.** All persons who resided at Hacienda Care Center
14 from November 23, 2006 though the date of class certification. Plaintiff Jerry Dore, as the
15 successor-in-interest to the Estate of Mary Dore, represents this subclass.

16 v. **Kindred Orange Class.** All persons who resided at Kindred
17 Healthcare Center of Orange from November 23, 2006 though the date of class certification.
18 Plaintiff Dora Hernandez, as the successor-in-interest to the Estate of Guadalupe Garcia,
19 represents this subclass.

20 vi. **Valley Gardens Class.** All persons who resided at Valley Gardens
21 Healthcare and Rehabilitation Center from November 23, 2006 though the date of class
22 certification. Plaintiff Anne Knieriemen, through her guardian ad litem and daughter Rochelle
23 Campbell, represents this subclass.

24 vii. **Canyonwood Class.** All persons who resided at Canyonwood
25 Nursing and Rehab Center from November 23, 2006 though the date of class certification.
26 Plaintiff Linda Mahaffey, as the personal representative of the estate of Alice Martin, represents
27 this subclass.
28

viii. **Santa Cruz Class.** All persons who resided at Santa Cruz Healthcare Center from November 23, 2006 through the date of class certification. Plaintiff Beverly Bakken, as the successor-in-interest of Gordon Bakken, represents this subclass.

ix. **Alta Vista Class.** All persons who resided at Alta Vista Healthcare & Wellness Center a/k/a Alta Vista Healthcare from November 23, 2006 through the date of class certification. Plaintiff James Morris represents this subclass.

x. **Smith Ranch Class.** All persons who resided at Smith Ranch Care Center f/k/a Guardian at Smith Ranch Care Center from November 23, 2006 through the date of class certification. Plaintiff Gordon Adams, through his guardian ad litem and niece Mary Stompe, represents this subclass.

c. **Private Pay Subclasses.** Within each of the above-referenced Facility Subclasses, a Private Pay Subclass is asserted on behalf of all Facility residents who made payments to defendants, or any of them, through their own funds during the Class Period. In addition to claims under Health & Safety Code section 1430(b), the Private Pay Subclasses assert the claims alleged in the Second Cause of Action (Bus. & Prof. Code section 17200 et seq.) and the Third Cause of Action (Civil Code section 1770 et seq.) against the relevant Facilities.

80. Excluded from the above-referenced class and subclass are: (i) persons who resided at the Alta Vista and Orange Facilities after they were sold on September 30, 2009; (ii) the defendants, any entity in which the defendants have a controlling interest, the officers, directors, and employees of any defendant, and the legal representatives, heirs, successors, and assigns of defendants; (iii) any judge assigned to hear this case (or any spouse or family member of any assigned judge); (iv) any juror selected to hear this case, (v) claims for personal injury and wrongful death; and (vi) any and all legal representatives of the parties and their employees.

81. This action is brought as a class action and may properly be so maintained pursuant to Rule 23 of the Federal Rules of Civil Procedure and applicable case law. In addition to injunctive relief, this action seeks recovery for economic damages arising from defendants' understaffing, such as recovery of statutory damages and/or moneys paid by named plaintiffs and the class as a result of defendants' failure to disclose and concealment of the fact that the

Facilities did not and would not comply with nurse staffing requirements, including Health & Safety Code section 1276.5 and Health & Safety Code section 1599.1. This action does not seek recovery for personal injuries that may have been caused by inadequate staffing at defendants' facilities.

82. **Numerosity of the Class.** Members of the class are so numerous that their individual joinder herein is impracticable. The precise number of members of the class and their addresses are presently unknown to Plaintiffs. The precise number of persons in the class and their identities and addresses may be ascertained from defendants' records. If deemed necessary by the Court, members of the class may be notified of the pendency of this action by mail, supplemented by published notice.

83. **Common Questions of Fact and Law.** Common questions of law and fact exist as to all members of the class. These common legal and factual questions include, without limitation:

a. whether all or some of the Facilities failed to comply with the 3.2 hour NHPPD minimum staffing requirements of Health & Safety Code section 1276.5 during the Class Period;

b. whether defendants failed to employ an adequate number of qualified nursing personnel to carry out all of the functions of their Facilities in violation of Health & Safety Code section 1599.1;

c. whether defendants' understaffing their Facilities violates any right(s) of residents as set forth in the Patients Bill of Rights in Section 72527 of Title 22 of the California Administrative Code;

d. whether defendants' conduct violates Health & Safety Code section 1430(b);

e. whether defendants' conduct violates Business & Professions Code section 17200 *et seq.*

f. whether defendants' conduct violates the Consumer Legal Remedies Act, Civ. Code § 1770 *et seq.*; and

1 g. whether defendants engaged in a pattern and practice of unfair and
2 deceptive conduct in connection with their management, administration and operation of the
3 Facilities.

4 84. **Typicality.** The claims of the Named Plaintiffs are typical of the claims of the
5 Facility Resident Class. On information and belief, Plaintiffs and Facility Resident Class
6 Members resided at one or more of the Facilities during the Class Period on days when that
7 Facility failed to (a) meet the 3.2 hour NHPPD minimum staffing requirements of Health &
8 Safety Code section 1276.5; and/or (b) failed to employ an adequate number of qualified nursing
9 personnel to carry out all of the functions of the Facility in violation of Health & Safety Code
10 section 1599.1.

11 85. In addition, the Named Plaintiffs made payments to one or more of the defendants
12 for skilled nursing services rendered at a Facility through private pay funds during the Class
13 Period. The named plaintiffs (and/or their decedents) for many of the facilities, including, without
14 limitation, Bay View, Canyonwood, 5th Avenue, Hacienda, Santa Cruz, Smith Ranch, and Valley
15 Gardens, paid private funds to the defendants. All named plaintiffs have sustained actual damages
16 and injury in fact.

17 86. **Adequacy.** The Named Plaintiffs will fairly and adequately represent the class
18 and subclass on whose behalf this action is prosecuted. Their interests do not conflict with the
19 interests of the Class. Also, they have retained competent counsel who have experience in class
20 action litigation and will prosecute this action vigorously.

21 87. **Defendants' Actions Apply Generally to the Class.** The above-referenced class
22 may be certified under Federal Rule of Civil Procedure 23(b)(2) because Defendants have acted
23 or refused to act on grounds generally applicable to the Class, thereby making appropriate final
24 and injunctive relief with respect to the Class.

25 88. **Predominance of Common Questions of Law and Fact.** The above-referenced
26 class may be certified under Federal Rule of Civil Procedure 23(b)(3) because questions of law
27 and fact common to Class members, such as those listed above, predominate over the questions
28 affecting only individual members of the Class.

89. **Superiority of Class Action.** A class action is superior to other available means for the fair and efficient adjudication of the claims asserted herein. The statutory damages, restitution and other potential recovery for each individual member of the Class are modest, relative to the substantial burden and expense of individual prosecution of these claims. Given the amount of the individual Class members' claims, few, if any, class members could afford to seek legal redress individually for the wrongs complained of herein. Thus, few, if any, Class members have any interest in individually controlling the prosecution of separate actions based on the claims in this action.

90. Upon information and belief, no other litigation by a class member concerning the controversy in this case is proceeding.

91. It is desirable to concentrate actions based on Plaintiffs' claims in this forum. Even if the members of the class themselves could afford individual litigation, the court system could not. Individualized litigation increases the delay and expense to all parties and the court system given the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

92. There are few, if any, likely difficulties in managing this action as a class action.

**FIRST CAUSE OF ACTION FOR VIOLATION OF HEALTH & SAFETY CODE
SECTION 1430(b) AGAINST ALL DEFENDANTS**

93. Plaintiffs refer to, and incorporate herein by this reference, all preceding paragraphs.

94. Health & Safety Code section 1430(b) provides that "a current or former resident or patient of a skilled nursing facility as defined in subdivision (c) of section 1250 . . . may bring a civil action against the licensee of a facility who violates any rights of the resident or patient as set forth in the Patients Bill of Rights in Section 72527 of Title 22 of the California Code of Regulations [which incorporates Health & Safety Code section 1599.1], or any other right provided for by federal or state law or regulation."

1 95. Section 1430(b) provides for a remedy of statutory damages “up to \$500” per
 2 violation, together with a right to injunctive relief, attorneys’ fees and costs. Health & Safety
 3 Code § 1430(b). The remedies in Section 1430(b) are cumulative to any other remedies provided
 4 by law. *Id.* § 1430(c). Given that the violation involves elderly and/or disabled residents, the
 5 statutory damage award is subject to trebling under Civil Code section 3345.

6 96. Defendants have violated and continue to violate Section 1430(b) by, among other
 7 things, failing to provide an adequate number of qualified personnel to carry out all functions at
 8 the Facilities in violation of Health & Safety Code section 1599.1(a). Specifically, defendants
 9 have failed to employ enough qualified nursing personnel to carry out the critical function of the
 10 Facilities, which is the provision of skilled nursing services. Defendants’ violation of section
 11 1599.1(a) is evidenced by , among other things: a) the Facilities have failed to comply with the
 12 3.2 hour NHPPD requirement of Health & Safety Code section 1276.5 on numerous days during
 13 the Class Period; and/or (b) the Facilities have failed to provide an adequate number of qualified
 14 nursing personnel in light of the aggregate patient acuity levels at the Facilities.

15 97. As a result of defendants’ conduct, Plaintiffs and class members have suffered
 16 injury and are entitled to statutory damages in an amount to be determined at trial, as well as
 17 injunctive relief, attorneys’ fees and costs.

18 98. For purposes of California Health & Safety Code section 1430(b), on information
 19 and belief, the California Department of Public Health (“DPH”) lists defendant Kindred West as
 20 the licensee for defendants Alta Vista, Bay View, Canyonwood, Fifth Avenue, Golden Gate,
 21 Hacienda, Orange, Santa Cruz, Valley Gardens, and Victorian; defendant Hillhaven as the
 22 licensee for defendant Nineteenth Avenue; defendant Care Center of Rossmoor LLC as the
 23 licensee for defendant Rossmoor; and defendant Smith Ranch Care Center LLC as the licensee
 24 for defendant Smith Ranch.

25 **SECOND CAUSE OF ACTION FOR UNLAWFUL, UNFAIR AND DECEPTIVE**
 26 **BUSINESS PRACTICES AGAINST ALL DEFENDANTS**

27 99. Plaintiffs refer to, and incorporate herein by this reference, all preceding
 28 paragraphs.

100. Defendants, and each of them, have engaged in unlawful and unfair business acts and practices in violation of Business and Professions Code section 17200 *et seq.*

101. In particular, defendants, and each of them, have engaged in unlawful business acts and practices in violation of Business and Professions Code section 17200 *et seq.* by violating numerous laws, statutes and regulations including, without limitation:

a. Failing to employ an adequate number of nursing qualified personnel violation of Health & Safety Code section 1599.1(a);

b. Systematically and uniformly failing to disclose, concealing and/or misrepresenting the true level of nurse staffing provided at their California skilled nursing facilities in violation of Business & Professions Code section 17500, *et seq.*

102. By virtue of the conduct alleged herein, defendants, and each of them, have also engaged in fraudulent business practices in connection with the representations, promises, omissions, and other statements made concerning the level of nurse staffing offered to residents admitted to their California skilled nursing facilities.

103. By virtue of the conduct alleged herein, defendants, and each of them, have also engaged in deceptive and misleading advertising through representations, promises, omissions, and other statements made concerning the level of nurse staffing offered to residents admitted to their California skilled nursing facilities.

104. Members of the general public (including without limitation persons admitted to and/or residing in the Facilities during the Class Period, and their family members and/or representatives) have been and are likely to be deceived by the statements, representations, omissions, and other conduct by defendants as alleged herein.

105. The acts and practices of defendants, and each of them, also constitute unfair business acts and practices within the meaning of Business & Professions Code section 17200, *et seq.*, in that the conduct alleged herein is immoral, unscrupulous and contrary to public policy, and the detriment and gravity of that conduct outweighs any benefits attributable to such conduct. Further, defendants' conduct threatens actual and incipient violations of numerous laws and regulations intended to protect elderly and/or disabled residents, and in addition, defendants'

1 conduct violates the policy or spirit of these laws and otherwise results in a significant harm or
2 threat of harm to elderly and/or disabled residents.

3 106. Defendants' conduct presents a continuing threat of harm to the public in that,
4 among other things, defendants continue to mislead elderly and/or disabled persons (and their
5 family members and/or representatives) into agreeing to be admitted to their skilled nursing
6 facilities based on the false and misleading representations and failure to disclose the true facts
7 concerning inadequate staffing and understaffing at the Facilities.

8 107. As a direct and proximate result of the defendants' unlawful business practices,
9 Plaintiffs and members of the Class have been injured in fact, lost money and sustained
10 substantial economic harm as alleged herein. Likewise, as a direct and proximate result of the
11 defendants' unlawful business practices, members of the general public (including Class
12 members) have been harmed and continue to be harmed by defendants' conduct.

13 108. Plaintiffs seek an injunction that requires that defendants immediately cease acts of
14 unfair and fraudulent business acts or practices as alleged herein, and to enjoin defendants from
15 continuing to engage in any such acts or practices in the future. Plaintiffs also seek restitution,
16 attorneys' fees, and all other remedies permitted by law.

17 109. Many of the named plaintiffs, including, without limitation, the representatives for
18 the Bay View, Canyonwood, Fifth Avenue, Hacienda, Santa Cruz, Smith Ranch, and Valley
19 Gardens Facilities, paid money from their own funds to the defendants based on the reasonable
20 expectation that the Facilities would be staffed in compliance with applicable laws. The true facts
21 are that the Facilities regularly failed to comply with the minimum and adequate nurse staffing
22 requirements under California law. As a result, named plaintiffs lost money and sustained injury
23 in fact as a result of defendants' conduct. As a direct and proximate result of the defendants'
24 unfair, unlawful and deceptive business practices, named plaintiffs, Class Members and members
25 of the general public have been harmed and continue to be harmed by defendants' conduct.

26 110. Plaintiffs seek an injunction that requires that defendants immediately cease acts of
27 unfair and fraudulent business acts or practices as alleged herein, and to enjoin defendants from
28 continuing to engage in any such acts or practices in the future. In addition, at present, the named

1 plaintiffs seek restitution on behalf of Private Pay Subclass Members from the following
 2 facilities: Bay View, Canyonwood, Fifth Avenue, Hacienda, Santa Cruz, Smith Ranch, and
 3 Valley Gardens. Plaintiffs also seek attorneys' fees and all other remedies permitted by law.

4 **THIRD CAUSE OF ACTION FOR VIOLATION OF THE CALIFORNIA CONSUMER**
 5 **LEGAL REMEDIES ACT AGAINST ALL DEFENDANTS**

6 111. Plaintiffs refer to, and incorporate herein by this reference, all preceding
 7 paragraphs.

8 112. The named plaintiffs are "senior citizens" and/or "disabled persons" as defined by
 9 Civ. Code § 1761(f) and (g), and "consumers" as defined in for purposes of Civ. Code § 1761(d).
 10 Defendants are "persons" as defined by Civil Code section 1761(c). The provision of skilled
 11 nursing services constitutes a "transaction" covered by the CLRA.

12 113. Each of the Defendants has violated and continues to violate the Consumers Legal
 13 Remedies Act, Civil Code §§ 1750 *et seq.* ("CLRA"), including, without limitation, sections
 14 1770(a)(5) and 1770(a)(7), by their failure to disclose, and active concealment of, the material
 15 facts. Defendants' conduct constitutes unfair and deceptive acts or practices in violation of
 16 section 1770(a) of the CLRA. Specifically, the following defendants failed to disclose and
 17 actively concealed the following material facts from the following named plaintiffs:

18 a. The Fifth Avenue Healthcare Facility represented to plaintiff Aranka
 19 Duboczy and her family members that it was a "skilled nursing facility," but failed to disclose and
 20 actively concealed that the Fifth Avenue Healthcare Facility failed to comply with California's
 21 adequate nurse staffing requirements as alleged herein.

22 b. The Rossmoor Facility represented to plaintiff Arlene Bettencourt and her
 23 family members that it was a "skilled nursing facility," but failed to disclose and actively
 24 concealed that the Rossmoor Facility failed to comply with California's adequate nurse staffing
 25 requirements as alleged herein.

26 c. The Bay View Facility represented to plaintiff Romaine Crvarich and her
 27 family members that it was a "skilled nursing facility," but failed to disclose and actively
 28

1 concealed that the Bay View Facility failed to comply with California's adequate nurse staffing
2 requirements as alleged herein.

3 d. The Hacienda Facility represented to plaintiff Mary Dore and her family
4 members that it was a "skilled nursing facility," but failed to disclose and actively concealed that
5 the Hacienda Facility failed to comply with California's adequate nurse staffing requirements as
6 alleged herein.

7 e. The Rossmoor Facility represented to plaintiff Harry Harrison and his
8 family members that it was a "skilled nursing facility," but failed to disclose and actively
9 concealed that the Rossmoor Facility failed to comply with California's adequate nurse staffing
10 requirements as alleged herein.

11 f. The Valley Gardens Facility represented to plaintiff Anne Knieriemen and
12 her family members that it was a "skilled nursing facility," but failed to disclose and actively
13 concealed that the Valley Gardens Facility failed to comply with California's adequate nurse
14 staffing requirements as alleged herein.

15 g. The Kindred Healthcare Center of Orange Facility represented to plaintiff
16 Guadalupe Garcia and her family members that it was a "skilled nursing facility," but failed to
17 disclose and actively concealed that the Kindred Healthcare Center of Orange Facility failed to
18 comply with California's adequate nurse staffing requirements as alleged herein.

19 h. The Canyonwood Facility represented to plaintiff Alice Martin and her
20 family members that it was a "skilled nursing facility," but failed to disclose and actively
21 concealed that the Canyonwood Facility failed to comply with California's adequate nurse
22 staffing requirements as alleged herein.

23 i. The Santa Cruz Facility represented to plaintiff Gordon Bakken and his
24 family members that it was a "skilled nursing facility," but failed to disclose and actively
25 concealed that the Santa Cruz Facility failed to comply with California's adequate nurse staffing
26 requirements as alleged herein.

27 j. The Alta Vista Facility represented to plaintiff James Morris and his family
28 members that it was a "skilled nursing facility," but failed to disclose and actively concealed that

1 the Alta Vista Facility failed to comply with California's adequate nurse staffing requirements as
2 alleged herein.

3 k. The Smith Ranch Facility represented to plaintiff Gordon Adams and his
4 family members that it was a "skilled nursing facility," but failed to disclose and actively
5 concealed that the Smith Ranch Facility failed to comply with California's adequate nurse
6 staffing requirements as alleged herein.

7 114. Each of the Defendants owed a duty to disclose the true facts regarding staffing
8 levels at the Facilities because, among other things: (a) defendants had exclusive knowledge of
9 material facts not known to the named plaintiffs and the class at the time of the subject
10 transactions; (b) defendants actively concealed material facts from the named plaintiffs and the
11 proposed class; and (c) each defendant represented that it was a "skilled nursing facility" to
12 named plaintiffs and the consuming public.

13 115. Without limitation, each of the Defendants had superior knowledge of the
14 California requirements for minimum and adequate qualified nurse staffing at skilled nursing
15 facilities, and the actual staffing levels at their facilities. Defendants had daily access to the
16 staffing, scheduling, payroll, and resident census and other information necessary to determining
17 whether the Facilities were complying with the adequate, qualified staffing requirement under
18 section 1599.1. Defendants made daily calculations with respect to nurse staffing levels at the
19 Facilities which showed numerous days during the Class Period on which the Facilities did not
20 even meet the bare minimum staffing requirements. Further, on information and belief,
21 defendants were repeatedly advised by Facility personnel of understaffed conditions. The named
22 plaintiffs did not know of these or other material facts concerning the understaffed conditions at
23 the Facilities.

24 116. Through deficiency notices and other reports issued by the California Department
25 of Public Health ("DPH"), and previously, by the Department of Health Services, many (if not
26 all) Defendants had direct notice of staffing violations at the Facilities. While some DPH reports
27 are publicly available, in practice, the public's access to such reports is limited at best. Without
28 question, defendants had better access to, and/or were in a superior position to know, the results

1 of DHS audits, DHS inspections, and numerous deficiencies or citations issued by the State of
2 California concerning staffing conditions at the Facilities.

3 117. In addition, defendants actively concealed or suppressed the true facts concerning
4 nurse staffing levels at the Facilities. Without limitation, defendants: (a) repeatedly concealed
5 from and/or failed to disclose to California regulators that the Facilities did not comply with
6 applicable nurse staffing requirements in connection with requests to obtain cost reimbursement
7 and/or maintain licensure status for the Facilities; (b) repeatedly concealed from and/or failed to
8 disclose to the consuming public (including the named plaintiffs) that the Facilities were
9 understaffed and did not comply with the Patient's Bill of Rights (which includes the right to
10 adequate, qualified staffing);(c) intentionally failed to disclose to residents or prospective
11 residents that the Facilities regularly fell below the bare minimum staffing requirement, despite
12 actual knowledge of such violations; (d) responded to DPH deficiency notices by promising to
13 improve staffing, but failed to do so; (e) failed to comply with the nurse staffing posting
14 requirements under state and federal law by posting projected (as opposed to actual) staffing, or
15 simply failed to post any nurse staffing information; and (f) responded to resident complaints with
16 misleading assertions that staffing concerns were either isolated incidents and/or would be
17 addressed.

18 118. In addition, defendants actively concealed or suppressed the true facts concerning
19 nurse staffing levels at the Facilities. Without limitation, defendants: (a) repeatedly represented
20 to the California regulators that they were complying with applicable nurse staffing requirements
21 to obtain cost reimbursement and/or maintain licensure status for the Facilities, even though such
22 representations were false; (b) representing to the consuming public (including the named
23 plaintiffs) that the Facilities would comply with the Patient's Bill of Rights (which includes the
24 right to adequate, qualified staffing), despite defendants' knowledge that the Facilities were
25 understaffed; (c) intentionally failing to disclose to residents or prospective residents that the
26 Facilities regularly fell below the bare minimum staffing requirement, despite actual knowledge
27 of such violations; (d) responding to DPH deficiency notices by promising to improve staffing,
28 but failing to do so; (e) failing to comply with the nurse staffing posting requirements under state

1 and federal law by posting projected (as opposed to actual) staffing, or simply failing to post any
2 nurse staffing information; and (f) responding to resident complaints with misleading assertions
3 that staffing concerns were either isolated incidents and/or would be addressed.

4 119. Without limitation, actions taken by Defendants with respect to the Canyonwood
5 Facility illustrate Defendants' efforts to conceal understaffed conditions from residents, family
6 members and regulators. For example, the staff at Canyonwood were specifically instructed to
7 not mention the word "understaffed" (or even hint about understaffing) to residents or their
8 families, even though staff knew the facility was understaffed at the time. Further, staffing levels
9 at Canyonwood were inflated during DPH inspections by adding hours supposedly worked by
10 management personnel, despite the fact that in their normal duties, management personnel did not
11 provide direct nursing care to residents. On information and belief, Kindred Inc. and KHOI
12 directed and/or approved the above-referenced actions taken at the Canyonwood Facility and has
13 directed and/or approved similar conduct at the other Facilities.

14 120. The facts concealed and/or not disclosed by defendants are material. The named
15 plaintiffs, class members and reasonable consumers would have considered the failure to meet the
16 minimum and adequate nursing staffing requirements to be important (if not critical) in deciding
17 whether to enter into the subject transactions and reside in defendant's Facilities. The named
18 plaintiffs and class members reasonably expected that the defendants' Facilities, as licensed
19 skilled nursing facilities, would meet or exceed these minimum and adequate staffing
20 requirements. Had the true facts concerning the understaffed conditions at the Facilities been
21 disclosed, the named plaintiffs and class members would not have agreed to reside at the
22 Facilities.

23 121. The named plaintiffs and class members could not reasonably have been expected
24 to learn or discover the non-disclosed facts concerning defendants' pervasive and ongoing
25 understaffing violations. Defendants knew that their persistent and extensive staffing violations
26 were not reasonably likely to be discovered. Defendants intentionally concealed, suppressed
27 and/or failed to disclose the true facts with the intent to defraud the named plaintiffs and class
28

1 members. Defendants also knew that the failure to meet the minimum and adequate qualified
2 nurse staffing posed a health and safety risk to the named plaintiffs and class members.

3 122. As a direct and proximate result of the defendants' conduct, the named plaintiffs
4 and the class members have suffered actual damages, and have been harmed and continue to be
5 harmed by defendants' conduct. In addition, many of the named plaintiffs including, without
6 limitation, the representatives for the Bay View, Canyonwood, Fifth Avenue, Hacienda, Santa
7 Cruz, Smith Ranch, and Valley Gardens Facilities, paid money to defendants, or otherwise
8 incurred costs and expenses, for nursing services that failed to meet reasonable expectations.
9 Defendants' conduct presents a continuing threat of harm to the public in that, among other
10 things, defendants continue to fail to disclose and/or conceal the fact that the Facilities do not
11 provide the minimum and adequate, qualified staffing required under California law. Despite
12 knowledge that the Facilities regularly fall below the bare minimum nurse staffing requirements,
13 defendants continue to induce elderly and vulnerable citizens to enter their Facilities.

14 123. As reflected in paragraphs 77 and 78 above, which are expressly incorporated here
15 by reference, defendants' failure to disclose, concealment and other conduct alleged herein
16 directly impacts the health, safety and well-being of the named plaintiffs and other class
17 members.

18 124. Despite receipt of written notice and an opportunity to cure the violations alleged
19 herein pursuant to Civil Code section 1782(a), defendants have failed to provide any remedy or
20 appropriate relief for their CLRA violations within the statutory 30-day time period. As such, the
21 named plaintiffs and class members in the private pay subclass are entitled to compensatory,
22 monetary and punitive damages, in addition to equitable and injunctive relief, attorneys' fees and
23 costs, and any other remedies available under the CLRA. At present, the named plaintiffs seek
24 CLRA damages on behalf of on behalf of Private Pay Subclass Members from the following
25 facilities: Bay View, Canyonwood, Fifth Avenue, Hacienda, Santa Cruz, Smith Ranch, and
26 Valley Gardens.

27 **PRAYER**

28 WHEREFORE, Plaintiffs pray for judgment as follows:

1. For a Court order certifying that the action may be maintained as a class action;
2. For a Court order requiring that defendants immediately cease acts that constitute unlawful, unfair, and fraudulent business practices, and violations of the CLRA as alleged herein, and to enjoin defendants from continuing to engage in any such acts or practices in the future;
3. For injunctive relief prohibiting defendants' violations of the Health & Safety Code § 1430(b) in the future;
4. For restitution and any other monetary relief permitted by law;
125. For statutory damages in an amount to be proven at trial, including \$500.00 in statutory damages for each understaffed Facility day in violation of each Class Members' rights pursuant to Health & Safety Code § 1430(b);
126. For punitive damages;
127. For treble damages pursuant to Civil Code section 3345;
128. For enhanced CLRA damages of up to \$5000 pursuant to Civil Code section 1780(b);
129. For pre-judgment interest, according to law;
130. For attorneys' fees and costs; and
131. For such other and further relief as the Court may deem just and proper.

Dated: April 13, 2012

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DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues stated.

Dated: April 13, 2012

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